

14. What Regulations Govern the Siting of a Low-Level Radioactive Waste Disposal Facility?

Between 1978 and 1992, commercial low-level radioactive waste was disposed of at one of three operating disposal facilities in the United States: Beatty, Nevada; Richland, Washington; and Barnwell, South Carolina. In 1979, the governors of Nevada and Washington temporarily closed their states' facilities to low-level radioactive waste generated outside their own geographic boundaries. They threatened permanent closure if the federal government did not make provisions for future low-level radioactive waste disposal and a more equitable distribution of disposal responsibility. Consequently, in 1980, Congress enacted the Low-Level Radioactive Waste Policy Act, which required states to take responsibility for disposal of their own commercial low-level waste. In 1985, Congress extended the deadline for providing disposal capacity and added incentives to encourage states to comply with the act by passing the Low-Level Radioactive Waste Policy Amendments Act. This Fact Sheet discusses the laws that govern low-level waste disposal in the United States and describes the "Compact" system.

► The Low-Level Radioactive Waste Policy Act

In 1979 the governors of Nevada, South Carolina and Washington believed that they should not have to bear forever the burden of low-level radioactive waste disposal for the entire country. Nevada and Washington temporarily closed their disposal facilities. Following their action, the National Governors' Association held meetings to discuss the issue. The result was a proposal which led to the passage in 1980 of the Low-Level Radioactive Waste Policy Act. The Act made states responsible for disposing of their own low-

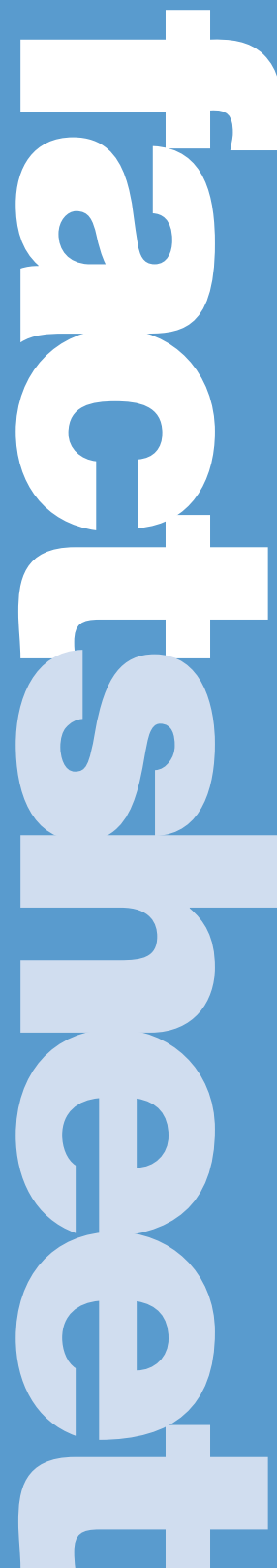
level radioactive waste and set forth the federal policy that waste disposal is best handled on a regional basis. The Act also encouraged groups of states to enter into regional compacts, or alliances, for the purpose of siting disposal facilities.

► The 1985 Amendments Act

After passage of the Low-Level Radioactive Waste Policy Act, states attempted to meet the requirements that they provide for disposal of their own low-level radioactive waste. The Act had established January 1, 1986 as the deadline after which a compact could exclude waste generated beyond its boundaries. However, it soon became clear that only the compacts with existing disposal facilities would be able to have a waste disposal facility in operation by the deadline. The National Governors' Association sent another proposal to Congress, which led to the passage of the Low-Level Radioactive Waste Policy Amendments Act of 1985.

The Amendments Act extended the operation of the three existing disposal sites to December 31, 1992. After that time the three sites could close or exclude waste from outside the compacts in which they were located. The Amendments Act also set up strong incentives to encourage states without sites for disposal facilities to site, license, and construct facilities. Compacts and states that did not have sites in 1985 faced rising disposal charges for using existing disposal facilities. They also had to meet specific **milestones** in order to maintain access to the facilities operating at the time (see Table 1).

An important aspect of the 1985 Amendments Act is that it defines a "compact" as an association, approved by Congress, between **two or more states**. An unaffiliated state may



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**Table 1. Status of Compacts:
Host State and Site
Selection**

Compact	Host State	Site Selected?
Appalachian	Pennsylvania	No
Central	Nebraska	Yes (a)
Central Midwest	Illinois	No
Midwest	Ohio	No
Northeast	Connecticut and New Jersey	No
Northwest	Washington	Yes (b)
Rocky Mountain	None	None (c)
Southeast	North Carolina	Yes
Southwest	California	Yes (a)

(a) Site has been selected but is being contested

(b) Northwest Compact will use the existing Richland, Washington low-level radioactive waste disposal facility

(c) Rocky Mountain Compact has an agreement to use the Richland, Washington disposal facility

not form a compact by itself and does not have Congressional authority to exclude waste from outside its boundaries.

The most controversial provision in the Amendments Act was the “take title” provision. This required states unable to provide for disposal capacity by the final milestones to take legal title to all low-level radioactive waste generated within their borders at the request of the waste generator. This portion of the Act was found unconstitutional by the U.S. Supreme Court in 1992, in the culmination of a legal challenge by New York State and two of its counties over the constitutionality of the Amendments Act. The Supreme Court ruled that all other parts of the Act are constitutional and legally enforceable.

► What Is a Compact?

The Low-Level Radioactive Waste Policy Act defines a compact as a legal agreement between two or more states to share in the disposal of low-level radioactive waste. For a state to become a member of a compact, its legislature must enact the compact agreement as a statute. After the legislatures of all states in a compact enact the agreement, Congress must also consent to it. Each compact is responsible for the development of disposal

capacity for commercial low-level radioactive waste generated within the compact.

Because the U.S. Constitution gives Congress the authority to regulate interstate commerce, only Congress can restrict such commerce. When Congress enacted the Low-Level Radioactive Waste Policy Act, it gave compacts explicit authority to exclude waste from a compact’s disposal facility if the waste was generated outside of the compact’s borders. This authority was provided to encourage the formation of compacts. Unaffiliated states are not empowered by the Act to exclude waste generated outside their borders. This exclusionary authority is currently being exercised in the Northwest Compact where the Richland disposal facility accepts waste only from the member states of the Northwest and Rocky Mountain Compacts.

Compacts are managed by commissions, with members appointed by the governors of the states within the compact. The commissions are the administrative bodies responsible for the implementation of the compact.

Generally, one state in each compact is chosen to initially **host** the low-level radioactive waste disposal facility. A state may volunteer to host the disposal facility, or the compact commission may select a host state.

The disposal facility will accept low-level radioactive waste for some period specified in the compact agreement. In most compacts, the disposal responsibility will rotate among the member states. Each compact is expected to develop a low-level waste disposal facility.

► **Current Status of the Compacts**

As of August 1996, 42 states belong to nine compacts approved by Congress. Texas, Vermont, and Maine are awaiting Congressional approval of their proposed compact. Massachusetts and Michigan are each planning a radioactive waste disposal facility. New Hampshire, Rhode Island, the District of Columbia, and Puerto Rico are working to secure access to another state's facility. New York has not announced plans for disposing of its low-level radioactive waste.

New Jersey and Connecticut form the Northeast Regional Compact. Currently both states are pursuing siting of a facility that would accept the waste generated within each state.

► **Current Status of Disposal Facilities**

On January 1, 1993, the three states with operating disposal facilities were no longer required to continue accepting low-level radioactive waste from outside the borders of their compacts. On that date, Nevada closed its disposal facility. Washington continued to operate its disposal facility, but accepted waste only from the Northwest and Rocky Mountain Compacts. South Carolina had agreed to continue accepting low-level waste from some states outside of its compact, including New Jersey, through June 30, 1994, at which time it closed to all but Southeast Compact members.

On July 1, 1995 the South Carolina

Legislature reopened the Barnwell site to all states except North Carolina. North Carolina was excluded ostensibly because it had not fulfilled its commitment to the Southeast Compact to have a waste site operational by 1995. The reopening of Barnwell has allowed for continued disposal of radioactive waste from New Jersey through the present time. Although South Carolina is currently accepting waste from most of the states in the country, this may be a temporary arrangement. Existing compacts and non-aligned states must continue to site their own low-level waste facilities. Barnwell has limited capacity and remains open on a year-to-year basis as determined by the South Carolina Legislature.

► **For More Information**

If you would like to read more about compacts, some of the references listed below may be helpful.

- Edward L. Gershey, et. al., *Low-Level Radioactive Waste From Cradle to Grave*, Van Nostrand Reinhold, New York, 1990.
- Public Law 99-240, "Low-Level Radioactive Waste Policy Amendments Act", 1985.
- U.S. General Accounting Office, "Nuclear Waste: Slow Progress Developing Low-Level Radioactive Waste Disposal Facilities" (GAO/RCED-92-61), 1992.
- The State of New York, the County of Allegheny, New York, and the County of Cortland, New York v. United States et al. 112 S.Ct. 2408 (Decided June 1992).
- (The NUREG references are available from the U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22161.)

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